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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

AP COMPANIES, LLC, et al., Plaintiffs, Cross-defendants, and Appellants, v. KRITI PROPERTIES et al., Defendants, Cross-complainants, and Appellants.	B218597 (Los Angeles County Super. Ct. No. BS119939)

APPEALS from an order and a judgment of the Superior Court of Los Angeles County, Kevin C. Brazile, Judge. Plaintiffs' Appeal: Order affirmed. Defendants' Appeal: Judgment vacated with directions.

Barrera & Associates, Patricio T.D. Barrera, and Ashley A. Davenport for Plaintiffs, Cross-defendants, and Appellants.

Farella Braun & Martel, Kelly A. Woodruff, and Diego F. Acevedo for Defendants, Cross-complainants, and Appellants.

In this partnership dispute, the superior court confirmed the arbitrator's award in favor of defendants and cross-complainants Kriti Properties and Development Corporation (Kriti) and Davidson Williams against plaintiff and cross-defendant AP Companies, LLC. (AP). All three parties have appealed from the judgment confirming the arbitrator's award. In addition, AP's general partner, Arpad Domyan, is an appellant in AP's appeal and a respondent in Kriti and Williams's cross-appeal.

In the appeal by AP and Domyan, we conclude that the superior court properly denied their petition to vacate the arbitrator's award based on their contention that the award was untimely. In the cross-appeal by Kriti and Williams, we conclude that the superior court erred in failing to confirm the arbitrator's award against Domyan as AP's alter ego, and that the prevailing parties are entitled to contractual attorney fees and costs.

BACKGROUND

AP, Kriti, and Williams entered into partnership agreements (collectively, agreement) related to the development of several real estate projects. The agreement required the parties to submit any disputes arising from the agreement to the American Arbitration Association (AAA) for arbitration, but was silent as to any deadline for the completion of arbitration.[1]

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[1] The agreement stated in relevant part: "Except as otherwise provided in this Agreement, any controversy between the parties arising out of this Agreement shall be submitted to the American Arbitration Association for arbitration in Los Angeles, California. The costs of the arbitration, including any American Arbitration Association administration fee, the arbitrator's fee, and costs for the use of facilities during the hearings, shall be borne equally by the parties to the arbitration. Attorneys' fees may be awarded to the prevailing or most prevailing party at the discretion of the arbitrator. The provisions of Sections 1286.2, 1283 and 1283.05 of the California Code of Civil Procedure apply to the arbitration. The arbitrator shall not have any power to alter, amend, modify or change any of the terms of this Agreement or to grant any remedy which is either prohibited by the terms of this Agreement, or not available in a court of law."

After a controversy arose under the agreement, AP as plaintiff and Kriti and Williams as cross-complainants submitted their disputes to the AAA for arbitration in 2007. Kriti and Williams initially did not raise any personal liability theories against Domyan in their cross-complaint, but Domyan was a party to the arbitration as a result of other cross-complaints filed by several limited partners—Solid State Front Street, LP, Sansome Street, LP, and Atlantic Realty Partners, BV—against AP and Domyan. The limited partners are no longer parties to this action as a result of a settlement agreement.[2]

I. The Arbitration Proceedings

The parties tried the issues raised in the complaint and cross-complaints before AAA arbitrator Deborah Rothman over several days in July and August 2008. The parties requested that the arbitrator issue a "reasoned award."

After the arbitration hearing was closed in October 2008, the parties set a November 14, 2008 deadline for issuing the arbitrator's award. This deadline was later extended to November 21, 2008.

On November 21, 2008, the AAA announced that the arbitrator would be reopening the hearing for the limited purpose of determining two issues: (1) Kriti's and Williams's requests for attorney fees and costs; and (2) Kriti and Williams's motion to pierce the corporate veil to establish Domyan's personal liability as AP's alter ego.

Under AAA commercial arbitration rule 36,[3] the arbitrator is authorized to reopen the hearing as follows: "The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed

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[2] In their opening brief, AP and Domyan state that the arbitrator exceeded her powers by awarding attorney fees to the limited partners. Given that the judgment as to the limited partners was vacated following a settlement agreement, the issue is moot.

[3] All further rule references are to the AAA rules.

in the contract, the arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award."

Also on November 21, the arbitrator issued a scheduling order that identified Kriti and Williams as the prevailing parties in the arbitration, but did not disclose the amount of the award or the factual and legal grounds for the award. In the scheduling order, the parties were invited to brief the remaining issues identified in the AAA's November 21 announcement.

After receiving the AAA's November 21 announcement and the arbitrator's November 21 scheduling order, AP filed a written objection titled "[Plaintiff's] Objection Re: Failure to Timely Make Award." AP argued that because the November 21 scheduling order did not constitute a final award, the arbitrator had failed to meet the November 21 deadline for issuing an award and, therefore, the proceedings must be terminated for lack of jurisdiction.

In support of its objection that the award was untimely, AP cited Code of Civil Procedure section 1283.8,[4] which provides: "The award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on petition of a party to the arbitration. The parties to the arbitration may extend the time either before or after the expiration thereof. A party to the arbitration waives the objection that an award was not made within the time required unless he gives the arbitrators written notice of his objection prior to the service of a signed copy of the award on him."

Also in support of its objection that the award was untimely, AP cited rule 36. AP relied on the second sentence of rule 36, which provides that the arbitrator must obtain the parties' consent if reopening the hearing would prevent the making of the award within the specific time fixed by the parties in the contract that is the subject of the arbitration.

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[4] All further statutory references are to the Code of Civil Procedure.

The AAA overruled AP's objection without comment and reaffirmed the arbitrator's appointment on December 12, 2008.

The arbitrator then reopened the hearing and received additional evidence regarding fees and costs and Domyan's alter ego liability. During this time, AP continued to object that the arbitration must be terminated because the November 21, 2008 deadline for issuing the award had expired.

On March 26, 2009, the arbitrator issued a final award in favor of Kriti and Williams. As will be discussed later in this opinion, one of the issues we must resolve is whether the award was issued solely against AP, as the superior court concluded in the judgment confirming the award, or was issued jointly and severally against AP and Domyan as AP's alter ego, as Kriti and Williams contend in the cross-appeal.

The 40-page award contains 35 pages of discussion, followed by a 36th page titled "**AWARD**," and several concluding pages of footnotes. On page 36 of the award, AP was ordered to pay Kriti and Williams $30,965 in damages for breach of contract and indemnity, $357,846 in attorney fees, and $44,677.37 in costs. The arbitrator did not mention Domyan on page 36 of the award. However, on page 35 of the award, the arbitrator granted the motion to pierce the corporate veil and stated that Domyan, "**as AP's alter ego, is jointly and severally liable with AP to respondents for AP's breaches of contract and fiduciary duties**."

II. The Superior Court Proceedings

After the final award was issued, the parties filed competing petitions in superior court. Kriti and Williams petitioned to confirm the award, while AP and Domyan petitioned to vacate the award. (§ 1285 [any party to an arbitration in which an award has been made may petition the court to confirm, correct, or vacate the award].)

Based on their interpretation that the arbitrator had issued an award against both AP *and* Domyan as AP's alter ego, AP and Domyan petitioned to vacate the award against Domyan on the ground that the arbitrator had exceeded her jurisdiction by imposing liability against a nonparty to the arbitration. They contended that although

Domyan was a party to the arbitration as to the cross-complaints filed by the limited partners, he was not a party to the arbitration as to the cross-complaint filed by Kriti and Williams.

With regard to the award against AP, AP and Domyan petitioned to vacate the award as untimely. They argued that, because the second sentence of rule 36 prohibited the arbitrator from reopening the hearing without AP's consent, the arbitrator had lost jurisdiction upon AP's timely objection that the November 21, 2008 deadline for issuing the award had expired. They cited section 1286.2, subdivision (a)(4), which requires the superior court to vacate an arbitration award if it determines that the arbitrator exceeded her powers and the award cannot be corrected without affecting the merits of the decision.

The superior court denied AP and Domyan's petition to vacate the award. With regard to Domyan's liability as AP's alter ego, the superior court made two separate findings. Although it found that Domyan *was* a party to the arbitration, it concluded that the arbitrator did *not* issue an award against Domyan as AP's alter ego. Accordingly, the record contains two grounds for the denial of the petition to vacate the award: (1) in light of the court's determination that Domyan was a party to the arbitration, the court implicitly rejected the petition's contention that the arbitrator had erroneously issued an award against a nonparty; and (2) in light of the court's determination that no award had been issued against Domyan, the court expressly stated that any purported error in granting the motion to impose alter ego liability was "a non-issue, and is not a basis for vacating the arbitration award."

With regard to AP, the superior court stated that because "the partnership agreements are silent as to the time to issue an arbitration award[,] . . . the arbitrator was free to re-open the hearing without the consent of the parties." The court applied the third sentence of rule 36, which provides: "When no specific date is fixed in the contract, the arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award."

After denying the petition to vacate the arbitration award, the superior court granted the competing petition to confirm the arbitration award. However, in light of its determination that no award had been entered against Domyan, the only award that was confirmed was the award against AP.

AP and Domyan appealed from the judgment confirming the award and the order denying the petition to vacate the award. Kriti and Williams cross-appealed from the judgment confirming the award.

DISCUSSION

"'It is well settled that the scope of judicial review of arbitration awards is extremely narrow. [Citations.]' (*California Faculty Assn. v. Superior Court* (1998) 63 Cal.App.4th 935, 943; accord, *Board of Education v. Round Valley Teachers Assn.* (1996) 13 Cal.4th 269, 275.) In determining whether private arbitrators have exceeded their powers, the courts must accord 'substantial deference to the arbitrators' own assessments of their contractual authority . . . .' (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 373.) Nevertheless, except where 'the parties "have conferred upon the arbiter the unusual power of determining his own jurisdiction" [citation], the courts retain the ultimate authority to overturn awards as beyond the arbitrator's powers, whether for an unauthorized remedy or decision on an unsubmitted issue.' (*Id.* at p. 375.) 'Guided by these standards, this court conducts a de novo review, independently of the trial court, of the question whether the arbitrator exceeded the authority granted him by the parties' agreement to arbitrate. [Citations.]' (*California Faculty Assn. v. Superior Court*, *supra*, 63 Cal.App.4th at p. 945; cf. *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 24.) In undertaking our review, however, 'we must draw every reasonable inference to support the award. [Citations.]' (*Pierotti v. Torian, supra*, 81 Cal.App.4th at p. 24.)

"In short, we review the superior court's order de novo, while the arbitrator's award is entitled to deferential review. (*Advanced Micro Devices, Inc. v. Intel Corp.*,

supra, 9 Cal.4th at p. 376, fn. 9.)" (*Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 541.)

I. AP and Domyan's Petition to Vacate the Award as Untimely Was Properly Denied

Preliminarily, we note that as to Domyan's liability, AP and Domyan in their opening brief do not challenge the superior court's finding that Domyan was a party to the arbitration. Although the opening brief states that the arbitrator exceeded her jurisdiction by granting the motion to pierce the corporate veil to impose personal liability against a nonparty (Domyan), it does not challenge the superior court's ruling to the contrary. Accordingly, for purposes of this appeal, we will assume that Domyan was a party to the arbitration.

As to AP's liability, AP and Domyan contend that the superior court's erroneous determination that the agreement did not fix a date for completing arbitration led to the erroneous denial of their petition to vacate the arbitration award as untimely. (See *Mid-Wilshire Associates v. O'Leary* (1992) 7 Cal.App.4th 1450, 1453-1454 [order denying a motion to vacate an arbitration award is not separately appealable, but is reviewable upon an appeal from a judgment confirming the award].) We disagree.

In our view, the parties in their agreement did not specify a deadline for completing arbitration. Accordingly, we conclude that this case falls under the third sentence of rule 36, which allows the arbitrator to reopen the hearing without the parties' consent when "no specific date is fixed in the contract." (Rule 36.)

AP and Domyan assert that the third sentence of rule 36 does not apply where, as here, the agreement is silent as to time, because the AAA has provided in rule 41 a default deadline that applies when the parties do not specify a deadline in their agreement. Rule 41 states that "[t]he award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the hearing."

The contention may be divided into three parts: (1) because the agreement is silent as to time, the default deadline in rule 41 applies and was incorporated into the parties' agreement; (2) because the default deadline of rule 41 was incorporated into the agreement, the agreement *did* specify a deadline for issuing the arbitration award; and (3) because the agreement *did* specify a deadline for issuing the arbitration award, this case falls under the second sentence of rule 36, which requires the arbitrator to obtain the parties' consent "[i]f reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen." (Rule 36.) We consider each part in turn.

1. We agree that by consenting to submit their disputes arising under the agreement to the AAA for arbitration, the parties incorporated the AAA rules into their agreement, which included the default deadline of rule 41. We find support for this proposition in *Kustom Kraft Homes v. Leivenstein* (1971) 14 Cal.App.3d 805, in which the agreement at issue provided for arbitration in accordance with the rules of the AAA. (*Id.* at p. 807.) The contractual provision for arbitration in accordance with the rules of the AAA was deemed sufficient to "import into the contract the entire scheme for arbitration as established by the Rules of the American Arbitration Association. When those rules are read into the contract it then appears to us to be comprehensive enough to be self-executing." (*Id.* at p. 811.) We believe the same reasoning should apply here, given the similarity of the contractual language. In this case, the parties agreed to submit to arbitration by the AAA. For purposes of this discussion, we see no meaningful distinction between this provision and the contract in *Kustom Kraft* that was subject to arbitration under the AAA rules.

2. We disagree that when an agreement is silent as to time, it nevertheless contains a deadline for issuing an arbitration award within the meaning of rule 36 by incorporating into the agreement the default deadline under rule 41. We conclude that a deadline that is applied by default under the AAA rules is distinguishable from a deadline that is specified by the parties in their agreement. According to the plain language of the

agreement, which was silent as to time, it is clear that the parties did not specify a deadline for completing arbitration in their agreement.[5]

3. Because we conclude that an agreement that is silent as to time does not specify a deadline for completing arbitration, we conclude that this case falls under the third sentence of rule 36, which allows the arbitrator to reopen the hearing without the parties' consent when "no specific date is fixed in the contract." (Rule 36.) We disagree that this case falls under the second sentence of rule 36, which states: "If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time." Accordingly, we find that the parties' consent was not needed to reopen the hearing in this case.

The manner in which the AAA handled AP's objection during the arbitration supports our determination that the parties' consent was not required to reopen the hearing. As previously mentioned, after the AAA announced that the arbitrator would be reopening the arbitration, AP objected that the proceedings must be terminated for failure to issue a timely award, because the arbitration could not be reopened without its consent under rule 36. Although the AAA overruled this objection without comment, its rejection of AP's position is supportive of our decision that under rule 36, the parties' consent was not required to reopen the hearing in this case.

By concluding that the parties' consent was not required to reopen the hearing under rule 36, we differentiate between a deadline that is specified by the parties in their agreement, which was not the situation in this case, and a deadline that applies by default under the AAA rules. In our view, when parties fail to specify a deadline for completing arbitration in the agreement out of which the dispute has arisen, the arbitrator may reopen the hearing under rule 36 without their consent, notwithstanding the default deadline in rule 41. We believe that our interpretation harmonizes rules 36 and 41 in accordance

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[5] Our conclusion is not altered by AP's claim that the parties' stipulation to extend the deadline to file the award constitutes a deadline that is specified in their agreement. The stipulation was extrinsic to the contract.

with the AAA's handling of this case, and remains true to the parties' agreement, which did not specify a time for completing arbitration. In light of our determination that the arbitrator was authorized to reopen the hearing without the parties' consent, we reject AP and Domyan's contention that the award was untimely and that the trial court erred in denying the petition to vacate the award on that basis.

II. The Failure to Confirm the Award Against Domyan Was Erroneous

In the cross-appeal, Kriti and Williams challenge the superior court's failure to confirm the arbitrator's award against Domyan as AP's alter ego. Based on their view that the arbitrator entered an award against Domyan as AP's alter ego, they make the procedural argument that under section 1286, if the superior court does not vacate or correct an arbitration award, it must confirm the award as entered.[6] They contend that because the superior court neither vacated nor corrected the award against Domyan as AP's alter ego, it was required to confirm the award against Domyan as made by the arbitrator. We agree.

We begin by considering whether the arbitrator entered an award against Domyan as AP's alter ego. In construing an arbitration award, we apply the same rules that apply in ascertaining the meaning of a court order or judgment: "The rule with respect to orders and judgments is that the entire record may be examined to determine their scope and effect (*Downs v. Kroeger*, 200 Cal. 743, 749), and where uncertainty is thereby made plain the defect does not necessitate a reversal. (*Vasiljevich v. Radanovich*, 138 Cal.App. 97, 100.) The same rules apply to an award of arbitrators." (*L. A. Local etc. Bd. v. Stan's Drive-Ins, Inc.* (1955) 136 Cal.App.2d 89, 94.)

Applying this standard here, it is appropriate to consider the award in the context of the motion that was before the arbitrator, which was to "pierce the corporate veil in

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[6] Section 1286 provides: "If a petition or response under this chapter is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding."

order to obtain a determination that any award against AP is enforceable against" Domyan. On page 35 of the award, the arbitrator expressly granted that motion. Page 35 clearly states that Domyan, "**as AP's alter ego, is jointly and severally liable with AP to respondents for AP's breaches of contract and fiduciary duties**."

Construing the award as a whole, it is evident from the language on page 35 that the arbitrator intended to hold Domyan liable for the damages entered against AP on page 36, even though Domyan was not mentioned on page 36. Given that AP and Domyan petitioned to vacate the award against Domyan, we believe this is a fair and reasonable reading of the award.

We also believe that in order to give effect to every provision of the award, pages 35 and 36 of the award must be read together. (See *Appalachian Ins. Co. v. McDonnell Douglas Corp.* (1989) 214 Cal.App.3d 1, 12 [a court must construe the instrument as a whole to give effect to every provision].) We therefore disagree with the superior court's overly narrow interpretation of the arbitration award that ignored page 35 and gave effect only to page 36 of the award. Unless the pages are read together, the granting of the motion to pierce the corporate veil is meaningless.

In reaching this conclusion, we are neither correcting nor altering the award. The award is clear on its face, so no correction or interpretation is necessary. We are simply giving effect to the award as a whole.

In light of our determination that the award must be read to include the arbitrator's determination that any award against AP is enforceable against Domyan, we reach the following conclusions. As previously mentioned, section 1286 provides that if the superior court does not vacate or correct an arbitration award, it must confirm the award as entered. Based on our determination that an award was made against Domyan, we conclude that because the award was not vacated, it should have been confirmed under section 1286.

Section 1287.4 provides that once an award is confirmed, the superior court must enter judgment in accordance with that award. In light of our determination that the award against Domyan as AP's alter ego must be confirmed, it necessarily follows that

the superior court must enter judgment in accordance with that award. We therefore vacate the judgment entered solely against AP, and remand with directions to enter a new judgment against both AP and Domyan, jointly and severally, in conformance with the arbitrator's award.

III. Attorney Fees and Costs

In their opening brief, Kriti and Williams seek to amend the judgment to include an award of contractual attorney fees and costs incurred in enforcing the judgment. They cite provisions in the operating agreements that provide for the prevailing party's recovery of attorney fees and costs incurred in enforcing a judgment.

In opposition, AP and Domyan contend that the superior court entered a postjudgment order on November 24, 2009, which awarded Kriti and Williams $22,455 in postarbitration attorney fees. AP and Domyan argue that Kriti and Williams had the burden of seeking to amend the judgment to include the fee award, which they failed to do.

In reply, Kriti and Williams contend that the November 24, 2009 fee award "is separate from and irrelevant to [their] broader request that this Court include in its order, or mandate the trial court to include in its judgment, a provision allowing the Respondents to collect fees, costs, and pre-judgment interest in all proceedings." "The request for an order granting fees and interest for these proceedings and for future enforcement actions is significant because Kriti and Williams will undoubtedly incur additional fees when they begin collection efforts against AP Companies and Arpad."

We discern no real disagreement on this issue. It appears to be undisputed that the relevant agreements contain a provision for the prevailing party's recovery of attorney fees and costs incurred in enforcing a judgment. The fact that the superior court awarded Kriti and Williams postarbitration attorney fees on November 24, 2009, supports this conclusion. We therefore conclude that as the prevailing parties, Kriti and Williams are entitled to contractual attorney fees and costs incurred in enforcing the judgment, which shall be reflected in the judgment entered by the superior court on remand.

DISPOSITION

In the appeal by AP and Domyan, the order denying the petition to vacate the arbitrator's award is affirmed. In the cross-appeal by Kriti and Williams, the judgment is vacated with directions to enter a new judgment against AP and Domyan, as AP's alter ego, jointly and severally, in conformance with the arbitrator's award. Kriti and Williams are awarded costs and contractual attorney fees on the appeal and cross-appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

WILLHITE, Acting P.J.

MANELLA, J.